

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1074 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MADHU NAIR

Versus

STATE OF GUJARAT

Appearance:

MR AS KOTHARI for Petitioners
MR Y.F.MEHTA,A.P.P. for Respondent No. 1
MR RAJESH B DESAI for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 24/10/96

ORAL JUDGEMENT

Rule.

Notice was issued before admission and I have given opportunity to both the sides to argue matter in detail and accordingly they have argued before me. Therefore, I proceed to decide it finally at this stage.

2. This application is filed by the accused in the Private Complaint filed by the respondent No.2 in the Court of Metropolitan Magistrate, Ahmedabad to quash the

said Criminal Case No.127 of 1996.

3. The petitioners before me entered into a consignment- agreement with respondent No.2 Rajiv Sharma and both the parties executed the said agreement on 25th December, 1995. As per the said agreement, the petitioner No.1 and 2 who are the directors of accused No.1-Inforce Marketing Pvt.Ltd. have to work as the consignee agent for the respondent No.2.The respondent No.2 Rajiv Sharma lodged the private complaint on 1-8-1996 alleging therein that the petitioners Nos. 1,2 and 3 have committed offence punishable under Sections 193, 196, 406, 409 and 420 of IPC.It is alleged by the complainant that the applicants before me were to work as agent for the complainant and they have to sell goods of the complainant by cash and they have to send amount of sales effected by them and they have also to give accounts for the goods sold as well as stock in hand. It is further alleged that as per the terms of contract,if there was any breach of the contract , then the accused would have to immediately send the goods whatsoever in their stock to the complainant-company. The accused had promise to fulfil the terms of the contract between the parties and by their promise they have created trust, but after the complainant had send goods to the accused, they have not abide by the terms of the contract and they have not send the amount of the total value of the goods sold by them and that they were not sending money every week. They have also not supplied the stock of goods. It is further alleged that the goods of the complainant worth Rs.27,23,226/- were sold by the accused. Then the accused had send Rs.37,000/- on 28-6-1996, Rs.38,076/- on 5--7-1996, Rs.50,404-86 on 12-7-1996, and Rs.56,938/- on 19-7-1996, but as they have not sent the whole amount, the accused have committed breach of contract as well as forgery with the complainant and thus it is alleged that they have committed offence punishable under Sections 193, 196, 406, 409, 420 and 114 of IPC. After the said private complaint was lodged, the learned Metropolitan Magistrate of Court No.9, Ahmedabad has passed the following order below Exh.1.

Looking to the details of the complaint

and details of the contract ; the agent has the goods of principal and either the agent lost the goods or has cheated the principal. It seems to be a civil complaint but looking to the above details, it also seems to be a criminal activities. To send to Navrangpura Police Station u/S. 156 (3). They

should report within one month.

4. This matter was heard by me on 16-10-1996 and when I was dictating the judgment and order, request was made on behalf of the respondent No.2 through his advocate that the court should not pass the final judgment in this matter as the same may affect their civil rights and that they will take proper proceedings in the Civil Court and they would withdraw this complaint and the matter be adjourned to today. On that submission made on behalf of the respondent No.2, the matter was adjourned today. A statement is made by the learned advocate for the respondent No. 2 that day before yesterday the respondent No.2 has filed a Civil Suit under the provisions of Order 37 of CPC and in the said Civil Suit, an application was also filed for taking inventory of the goods in custody of the present petitioner and that in fact inventory was made and that no goods were found at that time and he want me to take into consideration this circumstance. At the outset, it must be said that when the party had made a statement that he would withdraw the complaint and seek the postponement of delivery of judgment, a party could not be allowed to create evidence and then to ask the court to take the said subsequently created evidence into consideration. Such conduct of the party could not be accepted and deserves to be condemned. Here it must be also mentioned that at the time of submission made on the last date, it was made quite clear that after the Magistrate has ordered to direct the police to held an investigation under Section 156 (3) of the Code of Criminal Procedure, the respondent No.2- the complainant with the help of the police had taken all the goods which were in possession and custody of the present applicants before me, with the help of the police in an investigation u/S. 156 (3) and after they have acted in that manner, the conduct of the respondent No.2 in again seeking an inventory and to create evidence to show that no goods are lying there, after they have already taken over the goods with the help of the police is a conduct of playing fraud on the court. This clearly shows that the complainant-respondent No.2 in this case is not coming before the court with clean hands.

5. Admittedly the present petitioners were agents of the respondent No.2 and the parties have entered into a written document of consignment-agreement on 26th December, 1995. The terms Nos. 1, 5, 11 and 16 of the said agreement between the parties are relevant in considering the claim of the petitioners namely that the present prosecution by the respondent No.2 is a clear

abuse of process of law. These terms are running as under

1. RELATIONSHIP :-

It is expressly agreed that the consignee hereto is acting as the agent of principal for the purpose of accepting consignment and for selling goods and for other related lawful purposes. The Consignor however shall not be responsible for any contractual or tortious or financial or other liability whatsoever resulting from any act or commission of the consignee.

5. SALES :-

That the prices of the products shall be fixed by the consignor. In case if any alteration is needed to meet the market exigencies, the consignee shall with the consultation of the consignor and approval thereof can adopt the prices. All sales shall be effected in cash. No sale shall be made at less than invoice price nominated by the consignor. That the consignor at any place can effect sales from their head office to any customer in India or outside India. The consignor may also appoint any other person as agent in Ahmedabad or may sell the products by opening a branch at Ahmedabad.

11. GUARANTEE :-

That the consignee shall sell the goods to a solvent party and shall be responsible to recover the price thereof within the least delay possible. In any event it shall be bound to repay to the consignor the price of the goods sold on credit within less than one month of such sale of its own assets, and on such payment and not before, the title to the goods or the proceeds thereof shall pass to the consignee and shall thereafter be exempt from the provision of this agreement. Even if the buyer does not pay the price, the consignee shall be liable to pay the consignor.

16. ARBITRATION CLAUSE :-

Any dispute with regard to interpretation of terms or agreement or as to performance of agreement or non performance of agreement or terms thereof or in connection with or advising

out this agreement, shall be referred to Arbitrator as is agreed between the parties without prejudice to the rights of the consignor to recover or take possession of goods of the consignor still lying with the consignee or of the right of the consignor to terminate this agreement under the terms of clause 13 and 14 thereof.

6. I am aware that at this stage I am considering the matter for the purpose of quashing and at this stage it is not open for me to appreciate the material or evidence on record and I have to consider the averments made in the complaint by giving them face value, but those averments in the complaint are to be taken into consideration alongwith the terms of contract which has created relationship of agent and principal between the present petitioners and the respondent No.2. If the above terms of the contract between the parties are taken into consideration, then it would be quite clear that as soon as the goods are received by the consignee-agent, the consignee-agent was responsible for its sale. Even if it happen to sale the goods on credit, he was responsible to make payment of the price of the goods to the principal irrespective of the fact whether he receives the price of the same from the customer or not. When this clear term of the contract between the parties is there, and when the goods are delivered by the complainant to the consignee-agent, there is no question of creating any trust and entrusting the goods to the consignee-agent. The consignee-agent is liable to pay the price of the goods, and, therefore, the only remedy which was available for the principal is to go for the Civil remedy and not to go before a Criminal Court. The prosecution in question is a clear abuse of process of law. The said prosecution is done only in order to pressurize the agent and to have a vendetta against the agent. It is very pertinent to note that in the complaint, no details as what goods on what dates were delivered by the principal i.e. the complainant to the accused. There is only a vague statement that the goods worth Rs.27,23,226/- are delivered. It must be also further mentioned that it is not also mentioned that the complainant had asked the petitioners applicant before me to give their accounts and inspite of the demand of the accounts, the agent had failed to give account. The applicants have produced alongwith this application documents showing that they have supplied accounts from time to time and they were also dispatching amounts from time to time. The complainant has not only not given the

details in his complaint as to when and what quantity of goods were discharged by him, but has also not stated all the payment made by the present petitioners. The petitioners have produced on record of this petition the material to show that they had made payment of Rs.1,15,994/-, 1,06,444=15, 82,236/-, 32,541=33, 64,194/and 65,000/- on 13-2-96, 20-2-96, 3-4-96, 30-4-96, 4-6-96 and 27-6-96. They have also produced to show that they were supplying the necessary statement of accounts to the complainant. The complainant also does not mentioned in his complaint as on what date the accounts were called for from the present revision applicant by him and whether in fact he had visited the petitioners and had made any inquiry regarding the transactions, but from the averments made in the complainat itself, it would be quite clear that the dispute between the parties is arising out of a contract , it is a clear civil dispute and in the case of Trilok Singh and others v. Satya Deo Tripathi A.I.R.1979 Supreme Court, 850 it has been held that when the dispute raised by the respondent was purely of a civil nature, even assuming the facts stated complaint to be substantially correct, the criminal prosecution will have to be quashed by exercising jurisdiction under Section 482 of the Code of Criminal Procedure. Similarly in the case of Punjab National Bank and others v. Surendra Prasad Sinha, A.I.R.1992, 1815 it has been held that the judicial process should not be an instrument of operession or needless harassment. The court should be circumspect and judicious in exercising the discretion and should take all the relevant facts and circumstances into consideration before issuing process least it would be an instrument in the hands of the private complainant to vendetta to harass the person needlessly. In the instant case, the learned Metropolitan Magistrate, Ahmedabad has clearly mentioned that on reading the complaint, it is quite clear that the dispute between the parties is of purely civil nature. After arriving such a finding, he was not at all justified in directing an investigation under Section 156 (3) of the Code of Criminal Procedure. Therefore, in the circumstances, I hold that the present petition will have to be allowed and the prosecution of the petitioners will have to be quashed and set aside. I, therefore, hereby direct and order that Criminal Proceeding of Inquiry Case No.127/96 lying on the file of 9th Metropolitan Magistrate, Ahmedabad hereby stands quashed and set aside. Rule is made absolute.

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